

Minutes of the Meeting of May 7, 2003

The information provided in these notes is only a summary and is not intended to address every possible situation or contingency. This summary is subject to the provisions of applicable law, procedures, written directives and master contracts.

Payroll and Personnel Users Group (PPUG) Meeting

Presenters:	Central Payroll	Anne Huth
	Total Compensation Unit	Joi Simpson Sue Huang Laurie Benallo
	Employee Benefits Unit	Gena Trujillo Marilyn Jordan Vinita Biddle

Announcements – Anne Huth, Central Payroll

Packets

The packets contain today's dailies. They also contain information that shows employees whose federal and state tax allowances are not equal. Anne stated that in some instances, this inequality is "ok." Also included was a Social Security Administration verification report. Anne asked that people to double check these and try and fix them as best as they can.

May Advisor

Anne noted that in the May issue of The Advisor, Risk Management included a list of posters required by the federal government and state government. All of the required posters are also now available at the Risk Management website (<http://www.state.co.us/dhr/risk/safety.htm>).

Pay Day Change

Anne mentioned that an e-mail regarding the payday change went out to all PPUG participants recently. She restated what the change will involve:

- Monthly employees, who would normally be paid on June 30, will now be paid on July 1.
- Bi-weekly employees, who would be paid on June 27, will be paid on July 1.
- The only change to payroll processes will be the date monthly payroll will run. It will run on June 24, as opposed to June 20.
- Everything else stays the same (e.g. COFRS).

E-Mail

Anne asked that everyone keep Central Payroll, Benefits and others who disseminate information aware of their e-mail address and any changes to it. We do so much business via e-mail, so this is extremely important.

Garnishments

There was an unfortunate incident last month concerning a garnishment: Central Payroll received notification late in the month, they did not take the money and now the employee is terminated. Because of this, Anne is working on a policy to address these situations. When this is finalized it will be sent

out. In the meantime, she implored everyone to get notices of garnishment to Central Payroll as soon as possible.

Newsletter from Talx

Anne recently found out that AT&T will discontinue use of 1-900 numbers. This means that the current number for employment and income verification is incorrect. The new number for verifiers to call is **1-800-367-5690**. This information will go out in a newsletter as well.

State Switching Banks

Anne announced that in May, the State is switching banks from Wells Fargo to Bank One. COFFERS will change the system over Memorial Day weekend. Central Payroll will use the new bank codes when they run the May payroll, but that will be before the COFFERS system is changed. So payroll people should not expect to see monthly payrolls on COFFERS until the last week of May. The new bank code will be **0005**.

New Version of Integral System

Anne said that there is a new version of the Integral System that they hope to have installed this year. There will be some front screen changes, but the information behind should stay about the same. A team is being established to work on this project.

Other Projects

Anne said that the possibility of moving EMPL to CPPS is being studied. This is to look into the possibility of eliminating EMPL.

Anne also said that the other big project is the change from using Social Security numbers to employer ID numbers.

Questions for Anne

There were no questions.

Liability for Misclassifying Contract Employees – Joi Simpson and Sue Huang, DPA, DHR, Total Compensation Systems Unit

Joi Simpson, who works with the Personnel Services Contracts Review System, spoke about the problems with rehiring recently separated employees to do the same job they were doing and then classifying them as independent contractors. She said she understands why this happens, especially in light of the state budget concerns, but it is not allowed.

Agencies cannot hire laid-off employees as independent contractors to perform duties that they performed before being laid off for at least 6 months.

Agencies may hire back laid-off employees as state temporary employees (six months maximum). In addition, laid-off employees can be hired back as independent contractors provided they qualify as an independent contractor (this includes hiring former employees through employment agencies) to perform different or unrelated duties to that performed as an employee.

What is an independent contractor?

One who is independent of the state; the state does not control the means or method for completing the service.

One who provides such service with his or her individual investment (for equipments, tools, etc.)

One whose service is also available to others.

What is wrong with hiring laid-off employees as independent contractors?

Violates the employer-employee relationship as defined by the US Department of Labor. If they do not qualify as independent contractors, they are state employees, are covered under FLSA, and may be eligible for benefits.

May be subject to heavy fines and penalties by the IRS.

What can agencies do if some of the same functions need to be done?

Hire temporary employees from temp services that have no direct relationship to the service (former employee).

Hire laid off employees without giving preference to these employees to perform unrelated duties as performed for the state (no link between temporary hiring and layoff).

Assign duties to current employees on a temporary basis and consider discretionary pay differential for compensation if necessary and appropriate under rule and an agency's plan.

Reorganize to continue the function or eliminate the function.

Pay overtime to existing non-exempt employees to provide the service.

Sue Huang asked that people really pay attention to what an independent contractor is. If an independent contractor is doing work that regular employees do, the agency will have to pay PERA and benefits, because it's incorrect to have this person designated as an independent contractor and the employer – employee relationship has been violated.

Joi noted that because education on this issue has now been provided to the PPUG, the fines for willfully violating these rules can triple and eventually be levied against the person responsible.

**Questions (Answers Given
by Joi Simpson)**

Q – Do employees have to wait a month before coming back as State temporary employees?

A – Joi answered that they do not have to wait, unless they are a PERA retiree, in which case they *do* have to wait 30 days.

Q – Does this rule apply to retirees as well?

A – Yes, the same rules apply. Joi added that the period of work for an independent contractor should be finite. There should be an ending date **because it is** an independent contractor and it does not matter where the money to pay the contractor comes from, even if it is a grant.

Q – What is the procedure for becoming a State temporary employee?

A – The normal hiring practice. Laurie Benallo added that it will be the same as how a temp is hired normally, which means that the person will have to qualify for the position. Anne Huth reminded everyone that an agency can only have a State temp for only 6 months.

Q – Anne Huth asked what is the responsibility of people (more than likely, the people at this meeting) who may know about these situations occurring?

A – Joi said that they should call her and find out what can be done. She also said that her unit is trying to do audits to catch these issues. She added that if a person who knows about this, or even questions the classification, informs the appointing authority that they should not be doing this and the authority continues to misclassify the employee, the penalties will come down on the authority because they are willfully violating rules.

Joi noted that there is an article in the May issue of *The Advisor* dealing with this issue (<http://www.state.co.us/dhr/news.htm>) as well as the *Leader's Digest*.

**Health Insurance Portability
and Accountability Act
(HIPAA) – Gena Trujillo and
Marilyn Jordan, DPA, DHR,
Employee Benefits Unit**

Gena began the presentation by noting that HIPAA is a large issue for all of us. She emphasized that the State is a hybrid covered entity and it does not matter that we are fully insured. The purpose of the presentation is to make sure all of the people that are part of the PPUG have the background in HIPAA to deal with its consequences.

Power Point presentation:

<http://www.state.co.us/dhr/benefits/docs/HIPAA.pps>

**Questions (Answers given by
Gena and Marilyn)**

Q – Are the medical and dental enrollment forms Protected Health Information (PHI)?

A – Yes.

Q – Should PHI be in a locked cabinet?

A – Yes.

Q – What about faxes?

A – Faxes are ok, but you need to avoid having fax machines in open, common places. Gena also added that agencies may want to have everyone who works with PHI sign updated confidentiality statements, as the Benefits unit has done.

Q – An agency gets their enrollment forms scanned. What do they need to do?

A – The company that scans the forms is considered a business associate and the agency needs to work out an agreement with them about securing PHI. This agreement would need to detail measures such as encryption, passwords and firewalls.

Q – An agency receives e-mails asking for assistance. What do they do if an employee freely offers information and PHI?

A – It is permitted for the employee to offer such information. The concern is what the receiver of such information does with the information, because that person is now responsible for protecting it. Gena suggested that people avoid carbon

copying the response to all people who might be affected or have an interest in the outcome of a problem, even if the employee originally carbon copied all of those people. If the employee needs for someone to communicate with the carrier, the provider or someone else, the employee will have to sign an authorization.

The fines for not securing PHI are \$100 per like incident up to \$25,000 for incidental lapses in security. The fines can go up to \$250,000 for willfully misusing PHI.

Q – What about using information that is required to conduct business within an office and among coworkers?

A – It is permitted to use this information with each other because it is the job of payroll and personnel people to deal with this information. Gena added that an agency should get everyone to sign *current* confidentiality statements to demonstrate that this has been done to comply with HIPAA. She stressed that agencies should document everything that needs to be done and when it will be done to be HIPAA-compliant, even if it is just a handwritten note. This shows due diligence that everything that can be done is being done, and if it can't, it will be done by a certain time.

Q – If an employee is contemplating going out on Short Term Disability (STD), should that person's supervisor know about it?

A – STD is the fine line about PHI, HIPAA and benefits information. The supervisor is probably not the best person to send the employee to. Instead they should talk to their FMLA or STD coordinator. This is because there needs to be a firewall between personnel information and protected health information. An employer may not take disciplinary action or make decisions based on medical information.

Laurie Benallo added that STD is often connected to FMLA and FMLA has its own protections for information. While an supervisor/manager needs to know that a person needs leave (for scheduling and staffing purposes), that supervisor/manager is not required to know why an employee is going on STD.

Q – What's the difference between faxes and e-mails? Aren't faxes electronic transmissions that are just as easy to intercept as e-mails?

A – The federal government has not fully addressed information transmitted on paper, including faxes yet. For now, they are looking at electronic transmissions, primarily because that is the direction employers, providers and carriers are going and protection of individual identifiable information the focus. Still, however the information is received and transmitted, it is best to be conservative with all of it.

Q – How does Workers' Compensation work under HIPAA rules?

A – Workers' Compensation is not covered by HIPAA. People should still be careful with this information though, because cases do not always qualify for Workers' Comp, in which case the health information becomes PHI under HIPAA.

Q – Will we be given examples of confidentiality statements?

A – Yes, it will be attached to the minutes. Gena added that consistency throughout the State is best for HIPAA – especially with forms like confidentiality statements and authorization forms. We will also put these out on benefits' web site. Gena stated that **each agency is responsible for protecting PHI.**

<http://www.state.co.us/dhr/pubs/docs/benefits/agreement.pdf>

<http://www.state.co.us/dhr/pubs/docs/benefits/authorization.pdf>

Q – Should we combine personnel and benefits information?

A – No

Q – If someone at an agency needs to talk to the insurance company about an unpaid claim, will an authorization form be required?

A – Yes. You should also tell the employee that they might have to sign one from the insurance company as well. This will definitely cause delays in providing information and assistance to employees. You may get complaints from them about this, but it has to be the way we do business now because the liabilities are so great now. **Remember, that the state may defend an employee regarding HIPAA violations with PHI, but the State will not necessarily pay any penalties. It could very well be the employee's responsibility.**

Q – When an employee calls with an eligibility problem, will we need an authorization?

A – The concern with these cases is that often an eligibility problem arises out of medical issue, e.g. a person needs prescriptions or went to the doctor and found out that they are not eligible. If an employee gives medical information and asks you to contact the carrier, then yes, an authorization will be needed. If an employee is vague, just talking about eligibility and just want you to get someone from the carrier to call them, then no, an authorization is not required.

Q – If someone terminates, is it permitted to call and e-mail the carriers with this information.

A – Yes, because that is part of Operations (insurers are allowed to use PHI for Treatment, Payment and Healthcare Operations, or TPO.) We, the State, are directly responsible for determining eligibility and providing that information to the carriers.

Q – Isn't there already an authorization on the enrollment form? Why do we need another one?

A – The statement on the enrollment form is a blanket statement so that we may use the provided information in the course of business. The additional authorization is an authorization for a specific time and incident.

Q – If we need to obtain an authorization, can it be faxed to the employee and faxed back to us?

A – Yes, but not via e-mail.

Gena and Marilyn both suggested that authorization forms be kept in locked files at the agency.

Gena asked that everyone go back to their offices, cubicles and work areas and look to see if PHI is not secure. She wants everyone to get into the habit of securing and putting away information. The Benefits unit is *still* finding things we need to deal with, and they have been working on this for weeks. Be sure to document areas of concern and what will be done about these and a date this will be done. Again, this shows that everything is being done to be compliant under HIPAA.

Gena said that Benefits will post on their website the authorization forms and the confidentiality statements. Additionally, the website for the Office of Civil Rights (OCR – they oversee HIPAA enforcement) will be provided in the minutes, along with some other useful sites about HIPAA.

[Office for Civil Rights - Privacy of Health Records](#)

[State of Colorado - HIPAA Home Page](#)

<http://www.dhs.state.or.us/admin/hipaa/>

Life Insurance Announcements – Vinita Biddle, DPA, DHR, Employee Benefits Unit

Vinita had two announcements regarding life insurance.

- 1) We will soon be soliciting volunteers to serve on selection committee for Request for Proposal (RFP) going out for life insurance. Please watch for these and consider volunteering.
- 2) Another amendment to the current life insurance contract will be going out soon. It is a further clarification on effective dates. It is more of a technical correction. These will only be sent to those whose coverage was effective 1/1/03.

Reconciliation Between Carriers and the State – Gena Trujillo

Gena said this issue has been more of a concern with Cigna, but could come up with other carriers. She asked that if someone gets an inquiry from carrier about reconciliation, they act timely in responding. The person needs to indicate whether or not they agree with the reconciliation and whether or not it is a timely reconciliation. Marilyn Jordan is working closely with Anthem on reconciliation issues.

Questions

Q – It has been rumored that the long bill was signed last Friday. Has anything been heard as to how benefits fared in the bill?

A – Gena answered that her understanding is that the bill increased the state contribution to benefits by 4.7%. Dollar amounts were indicated, but Benefits has not been made aware of these or even if these amounts were in the approved bill. There was also an issue with the effective date for these increases. In the bill, they were to go into effect 12/1/03, but since the premiums for benefits are taken in the month that

they pay for, this needed to be corrected. This was corrected by another bill.

As soon as Benefits has confirmation on all of things, they will send out the information.

Q – We have previously said that if an employee is not working in a month, then they are not eligible for benefits. What if an employee is on paid leave? If an employee is on annual leave, like May 1 through May 9th and then leaving state service. Is this employee eligible for May benefits?

A – The employee in the above situation is still considered an active employee and deductions for May coverage should be made.

Q – I understand there may be some confusion on a child turning 5 in a month and dental benefits. If a child turns 5 on May 16th and the employee is paying for employee only (no one else on coverage), does the employee need coverage for the child turning 5 on May 1 or June 1? I had spoken to our benefits department in April and we concluded that since the “Life change” was May 16th, they needed coverage the first of the month following the life change. In speaking with Anne Huth she thought that the rule was really that this employee would need May 1 coverage for the child turning 5. She was thinking she had misunderstood this previously.

A – Those employees that add children under the age of 5 to their dental plan do not pay premium until the child turns 5. This statement basically applies to employees who then do not add these children ongoing after the child turns five. If the employee does want to continue dental coverage for the child, then deductions to cover that child (based on the example in the question) must be made in May. Since coverage for the child would be continuous and the state cannot prorate the premium for May, we must take full premium for the month of May.